

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

MARIE M. CALIXTE,

Petitioner

v.

JOHN ASHCROFT, ET AL.

Respondents

2004 APR 28 P 2:46  
U.S. DISTRICT COURT  
DISTRICT OF MASS  
Civil Action No.  
04cv10457-MLW

SUPPLEMENTAL MEMORANDUM IN SUPPORT OF MOTION TO DISMISS

By previous filed dated April 4, 2004, respondent informed the Court that petitioner, because she is a criminal alien, can be removed to Haiti only on such a flight, and not on a commercial flight. Since the recent unrest in Haiti, JPATS flights have been waiting for clearance from the Haitian authorities to resume. JPATS flights have been scheduled and then cancelled when no clearance has been issued, although some commercial air traffic has resumed to Haiti. It is unknown at present exactly when such clearance for JPATS flight will be granted and such flights will resume.

Due to the continuing uncertainty regarding the scheduling of petitioner's removal to Haiti at this time, a decision was made by respondent to release petitioner, and petitioner was in fact released from respondent's custody on April 21, 2004. See Attachment A, Release Notification, and Order of Supervision.

Accordingly, because the relief sought by petitioner has now

come to pass -- her release from respondent's custody -- the case should be dismissed as moot.

ARGUMENT

I. PETITIONER HAS BEEN RELEASED FROM RESPONDENT'S CUSTODY AND THEREFORE THE CASE SHOULD BE DISMISSED FOR MOOTNESS.

"It is well settled that a case is moot 'when the issues presented are no longer "live" or the parties lack a legally cognizable interest in the outcome, ... or alternatively, when the 'party invoking federal court jurisdiction' no longer has 'a personal stake in the outcome of the controversy.'" Boston & Maine Corp. v. Brotherhood of Maintenance of Way Employees, 94 F.3d 15, 20 (1st Cir. 1996) (citations omitted).

"A case is moot, and hence not justiciable, if the passage of time has caused it completely to lose its character as a present, live controversy of the kind that must exist if the court is to avoid advisory opinions on abstract propositions of law." Laurence H. Tribe, American Constitutional Law S 3-11, at 83 (2d ed. 1988) (internal quotations omitted). Once a case or controversy is moot, a federal court no longer retains jurisdiction to adjudicate the merits of the case. U.S. Const. art. III, S. 2 et seq.; see also U.S. Bancorp Mortgage Co. v. Bonner Mall Partnership, 115 S.Ct. 386, 390 (1994).

Because the result sought in the petition -- release from the custody of the Department of Homeland Security until such

time as her removal becomes practicable -- has now been effected by petitioner's release from custody on April 21, 2004, see Attachment A, there is no live case or controversy and accordingly the petition should be dismissed as moot.

CONCLUSION

Because there is no present case or controversy, this action should be dismissed for mootness.

Respectfully submitted,

MICHAEL J. SULLIVAN  
United States Attorney

By:

FRANK CROWLEY  
Special Assistant U.S. Attorney  
Department of Homeland Security  
P.O. Box 8728  
J.F.K. Station  
Boston, MA 02114  
(617) 565-2415

CERTIFICATE OF SERVICE

I hereby certify that I caused true copy of the above document to be served upon pro se petitioner by mail on April 28, 2004, **at her address indicated upon release at:**

**Marie Calixte**  
**359 Park St., Apt. 4**  
**Dorchester, MA 02124**

FRANK CROWLEY  
Special Assistant U.S. Attorney  
Department of Homeland Security  
P.O. Box 8728  
J.F.K. Station  
Boston, MA 02114

**ATTACHMENT A**



Apr-22-04

08:44am

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Document 9

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11:36am

From-fbi prints

3046255587

T-818

P.003/007

F-178

04/21/04 08:21 FAX 202 359 9435

HQOPS DETENTION/REMOVAL

Office of Detention and Removal Operations

U.S. Department of Homeland Security  
425 I Street NW  
Washington, DC 20536U.S. Immigration  
and Customs  
Enforcement

April 20, 2004

Marie CALIXTE (A37 322 672)  
C/O ICE  
JFK Building  
Boston, MA 02103**Release Notification**

Upon review of your case, U.S. Immigration and Customs Enforcement (ICE) has concluded that you may be released from ICE custody pending your removal from the United States. This release does not affect your removal order and does not constitute an admission to the United States.

Your release will be subject to certain written conditions that will be provided to you shortly, and by which you must abide. Among the conditions will be weekly reporting to ICE. A violation of one of more of these conditions, or of any local, state or federal law may result in your being taken back into custody and any bond that you may have posted being forfeited. Your release from custody is also conditioned upon your maintaining proper behavior while sponsorship and placement efforts for you are being undertaken.

Prior to your release from custody, an immigration officer will verify the sponsorship or employment offers presented during your review. Please forward any additional information regarding potential sponsoring family members or non-governmental organizations that may be willing to assist you upon release.

It is particularly important that you keep ICE advised of your address at all times. We will continue to make efforts to obtain your travel document that will allow the United States government to carry out your removal pursuant to your order of deportation, exclusion, or removal. In addition, you are required by law to continue to make good faith efforts to secure a travel document on your own. Once a travel document is obtained, you will be required to surrender to ICE for removal. You will, at that time, be given an opportunity to prepare for an orderly departure.

  
Signature of HQPDU Director/Designated Representative4/20/04  
Date

Apr-22-04

08:44am

From: fbi prints

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F-148

04/21/04 08:21 FAX #02 353 9435

HQOPS DET&REMOVAL

# Decision of Port Order Custody Review - Release

A37 322 672 CALIXTE, Marie

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## PROOF OF SERVICE

(1) Personal Service (Officer to complete both (a) and (b) below.)

(a) I PATRICK MULLEN IEA  
Name of ICE Officer Title  
certify that I served MARIE CALIXTE with a copy of  
Name of detainee  
this document at 5 BAY BOSTON, MA on 04-21-04 at 1300  
Institution Date Time

(b) I certify that I served the custodian \_\_\_\_\_  
Name of Official  
\_\_\_\_\_, at \_\_\_\_\_, on \_\_\_\_\_  
Title Institution  
\_\_\_\_\_ with a copy of this document.  
Date

OR

(2) Service by certified mail, return receipt. (Attach copy of receipt)

I \_\_\_\_\_, certify  
Name of ICE Officer Title  
that I served \_\_\_\_\_ and the custodian \_\_\_\_\_  
Name of detainee Name of Official  
with a copy of this document by certified mail at \_\_\_\_\_ on \_\_\_\_\_  
Institution Date

( ) cc: Attorney of Record or Designated Representative

( ) cc: A-File



J.S. Department of Homeland Security  
Immigration & Customs Enforcement

**Order of Supervision-Addendum**

File No: \_\_\_\_\_

Date: 04-20-04

Name CALIXTE, Marie A37322672

☒ That you do not associate with known gang members, criminal associates, or be associated with any such activity.

☐ That you register in a substance abuse program within 14 days and provide the INS with written proof of such within 30 days. The proof must include the name, address, duration, and objectives of the program as well as the name of a program counselor.

☐ That you register in a sexual deviancy counseling program within 14 days and provide the INS with written proof of such within 30 days. You must provide the INS with the name of the program, the address of the program, duration and objectives of the program as well as the name of a counselor.

☐ That you register as a sex offender, if applicable, within 7 days of being released, with the appropriate agency(s) and provide the INS with written proof of such within 10 days.

☒ That you do not commit any crimes while on this Order of Supervision.

☒ That you report to any parole or probation officer as required within 5 business days and provide the INS with written verification of the officers name, address, telephone number, and reporting requirements.

☒ That you continue to follow any prescribed doctors orders whether medical or psychological including taking prescribed medications.

☒ That you provide the INS with written copies of requests to Embassies or Consulates requesting the issuance of a travel document.

☒ That you provide the INS with written responses from the Embassy or Consulate regarding your request.

☒ Any violation of the above conditions will may result in revocation of your employment authorization document.

☒ Any violation of these conditions may result in you being taken into Service custody and you being criminally prosecuted.

☒ Other.



U.S. Department of Homeland Security  
Immigration & Customs Enforcement

Order of Supervision

**CALIXTE, Marie A37322672**

File No: \_\_\_\_\_

Date: 04-20-04

Name: \_\_\_\_\_

on 03-20-03, you were ordered:  
(Date of final order)

- ☐ Excluded or deported pursuant to proceedings commenced prior to April 1, 1997.  
☒ Removed pursuant to proceedings commenced on or after April 1, 1997.

Because the Service has not effected your deportation or removal during the period prescribed by law, it is ordered that you be placed under supervision and permitted to be at large under the following conditions:

- ☒ That you appear in person at the time and place specified, upon each and every request of the Service, for identification and for deportation or removal.
- ☒ That upon request of the Service, you appear for medical or psychiatric examination at the expense of the United States Government.
- ☒ That you provide information under oath about your nationality, circumstances, habits, associations, and activities and such other information as the Service considers appropriate.
- ☒ That you do not travel outside Boston District Office for more than 48 hours without first  
(Specify geographic limits, if any)  
having notified this Service office of the dates and places of such proposed travel.
- ☒ That you furnish written notice to this Service office of any change of residence or employment within 48 hours of such change.
- ☐ That you report in person on the EVERY MONDAY AT 09:00 AM To this Service office at  
JFK Bldg Government Center, Room 1775, Boston, Ma 02203 unless you are granted written permission to report on another date.
- ☒ That you assist the Immigration and Naturalization Service in obtaining any necessary travel documents.
- ☐ Other: \_\_\_\_\_
- ☒ See attached sheet containing other specified conditions (Continue on separate sheet if required)

(Signature of INS official)

Timothy T. Stevens  
(Print name and title of INS official)

**Alien's Acknowledgment of Conditions of Release under an Order of Supervision**

I hereby acknowledge that I have (read) (had interpreted and explained to me in the \_\_\_\_\_ language) the contents of this order, a copy of which has been given to me. I understand that failure to comply with the terms of this order may subject me to a fine, detention, or prosecution.

P. Muller IEA  
(Signature of INS official or his clerk)

X Marie Calixte  
(Signature of alien)

042704  
Date



Tide